



**G A O**

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**Comptroller General  
of the United States**

**United States Government Accountability Office**  
Washington, DC 20548

# Decision

**Matter of:** American Government Marketing, Inc.

**File:** B-294895

**Date:** November 22, 2004

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Daryl Winter for the protester.

Eric Kattner and Capt. Elwood L. Waters, III, Department of the Air Force, for the agency.

Kenneth Kilgour and Christine S. Melody, Esq., Office of the General Counsel, participated in the preparation of the decision.

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## **DIGEST**

Under brand name or equal solicitation, protester's proposal was properly rejected as unacceptable where the product offered as equal to the brand name failed to satisfy four minimum requirements set out in the solicitation.

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## **DECISION**

American Government Marketing, Inc. (AGM) protests the award of a contract to Critical Solutions, Inc. (CSI) by the Department of the Air Force under request for quotations (RFQ) No. FA4803-04-Q-A112, issued to procure 35 all-terrain vehicles (ATV), Yamaha Model Rhino or equal, with various accessories and maintenance kits. AGM argues that the agency improperly rejected its lower-priced quotation.

We deny the protest.

The Air Force issued a combined synopsis/solicitation on September 17, 2004, as a small business set-aside. Firms were to quote prices for 35 ATVs, Yamaha model Rhino 660 or equal, with minimum requirements that included a 660 cc engine, automatic transmission, 4-wheel drive, minimum 12-inch ground clearance, and a digital speedometer. The award was to be made to the vendor providing "best value to the government based on an integrated assessment of price." RFQ at 2. Vendors were advised that quotations for models other than the specified brand name must demonstrate how they meet the specifications outlined. The combined synopsis/solicitation also required that all quotations show maintenance capability in the southwest Asia region.

Sixteen vendors responded. The agency evaluated the products submitted and determined that only three met the specifications. The evaluators found AGM's product, a Raptor M series ATV, unacceptable for four reasons: insufficient 614 cc engine size, different transmission type, too little ground clearance, and different type of speedometer. Contract award was made to CSI, which offered the lowest price of those whose products met the minimum requirements of the solicitation.

AGM argues that the agency erred in rejecting its product, which was lower in price than CSI's. Under a brand name or equal solicitation, a firm offering an equal product must demonstrate that the product conforms to the salient characteristics of the brand name product listed in the solicitation. Bryan Constr. Co., B-261482, Sept. 20, 1995, 95-2 CPD ¶ 142 at 2-3. If the firm fails to do so, its product properly is rejected as nonconforming. Id. Here, applying the specifications contained in the RFQ to AGM's product, the agency found AGM's quotation unacceptable. In its response to the agency report, AGM does not dispute that finding, and the record clearly establishes that the product quoted by AGM failed to meet four minimum specifications contained in the RFQ. Accordingly, we find that the agency properly rejected AGM's product.

AGM also raised several other issues in its protest. Most concern alleged solicitation improprieties, which AGM effectively abandoned in its comments on the agency report and which were untimely raised in any event. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2004) (a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time must be filed before that time). To the extent that AGM challenges the selection of CSI—arguing, for example, that its price is unreasonable because it is higher than the manufacturer's suggested retail price for the item—AGM is not an interested party because, having properly been found to have quoted a nonconforming product, it would not be in line for award even if the protest were sustained on this ground. Endure-A-Lifetime Prods., Inc., B-219529.2, Oct. 11, 1985, 85-2 CPD ¶ 404 at 3-4.

The protest is denied.

Anthony H. Gamboa  
General Counsel